* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 05.04.2019

% Judgment delivered on: 28.08.2019

\+ **W.P.(C) 3451/2015**

NORTH DELHI MUNICIPAL CORPORATION & ANR. ..... Petitioner

Through: Mr. R.V. Sinha, Mr. A.S. Singh & Mr. Amit Sinha, Advocates.

versus

RAJESH SHARMA ..... Respondent

Through: Mr. Anil Grover and Mr. Mishal Vij, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J.

1. The instant writ petition preferred by North Delhi Municipal Corporation in short 'NrDMC', and, its Commissioner, assailing the judgment dated 07.08.2014 passed by the Central Administrative Tribunal, Principal Bench, in short 'CAT', in O.A. No. 4466/2011 raises an important question of law as to who is the competent authority to take disciplinary action(s) and impose penalty(ies) on the municipal officers and other

municipal employees under The Delhi Municipal Corporation Act, 1957 in short 'the Act', post its amendment by The Delhi Municipal Corporation (Amendment) Act, 1993 (Act 67 of 1993). This question of law was sought to be agitated before the Supreme Court in Appeal (Crl.) Nos.7932-7933/2012 ***CBI vs. G.S. Matharoo,*** arising from the judgment of a ld. Single Judge of this Court in ***G.S. Matharoo Vs. CBI***, Crl.M.C. No.2695/2010 decided on 25.01.2012, but the Supreme Court dismissed the said appeals *in limine* on 26.08.2014, keeping all questions of law open. The impugned judgment of CAT is squarely founded on ***G.S. Matharoo*** (supra) decided by the learned Single Judge.

2. Before we proceed to answer the question of law, it would be appropriate to advert to the relevant facts giving rise to filing of the OA by the respondent-Rajesh Sharma, and the passing of the impugned order by CAT. The respondent was initially appointed as Junior Engineer in the year 1978 and, in due course, given appointments to the higher posts on promotions. On 09.01.1997, he was appointed as Executive Engineer (Civil) on the recommendation of the DPC in consultation with UPSC. It emerges from the record that during this period, he, alongwith one S.B. Bhardwaj, Asstt. Engineer, was convicted on 15.07.2011 for the commission of the offences under Sec.13(1)(d) of Prevention of Corruption Act, 1988 in short 'PoC Act', and, under Secs. 420 and 120B IPC. Both of them were sentenced to undergo RI for a period of three years with fine of Rs.40,000/- each under Sec. 13(1)(d) of PoC Act; one year for offence under Sec. 420 IPC with a fine of Rs.30,000/- each; and, one and a half year for the offence under Sec.120B with a fine of Rs.30,000/- each.

3. On the receipt of such information from Addl. Commissioner (Police), AC Branch, Govt. of NCT of Delhi, the Commissioner, vide his order No.2643/SIO(P)/Vig./ACB/ 2001/ D-62 dated 15.11.11, imposed penalty of dismissal from service upon the respondent by invoking the provisions of Regulation 9(i) of the DMC Services (Control & Appeal) Regulations, 1959, in short 'the Regulations 1959' read with Sec. 95(2)(a) of the Act. There-against, the respondent preferred the Original Application before CAT. In the OA so filed, the respondent averred that he was promoted as Executive Engineer in the pay scale of Rs.3000-4500 – pursuant to the recommendation of UPSC on 09.01.1997. He submitted that he was a Group 'A' officer with Grade Pay of Rs.6600/-. He averred that the competent authority to take disciplinary action against him was the Corporation, and not the Commissioner and, therefore, the dismissal order dated 15.11.2011 was not sustainable in law. In support of his plea, the respondent adverted to the Schedule relatable to Regulation 7 of the Regulations, 1959. The CAT held that the question of competence of the Commissioner – or rather the lack of it, to act as the Disciplinary Authority in respect of Group 'A' officers of the Corporation was no more *res integra*, in view of the ratio of the judgment in ***G.S. Matharoo*** (supra) and, therefore, quashed the dismissal order dated 15.11.2011. The petitioner NrDMC has thus approached this Court assailing the impugned order passed by CAT.

4. The challenge made to the impugned order of the CAT, primarily, proceeds on two counts. Firstly, that CAT failed to take note of the fact that the Commissioner was the Appointing Authority of the respondent, and, therefore, he had the inherent competence and the authority, to take the

disciplinary action against the respondent. Secondly, and, alternatively, with the amendments carried out in the DMC Act in the year 1993, which, *inter alia*, substituted Section 59(d), the Commissioner was named as the Disciplinary Authority in relation to all Municipal Officers and other Municipal Employees and, therefore, the passing of the dismissal order against the respondent was well within his domain and competence. In view of the fact that the Supreme Court – on the Appeals preferred from ***G.S. Matharoo*** (supra), kept all the questions of law open, and the fact that the Municipal Corporation of Delhi was not a party to the proceedings in ***G.S. Matharoo*** (supra), it is also the plea of petitioner Nr.DMC that the decision of ld. Single Judge in ***G.S. Matharoo*** (supra) is not binding on the Municipal Corporation.

5. In the given factual conspectus, ld. counsel for the petitioner submits that the Commissioner being the appointing authority of the respondent, he was invested with the authority to take disciplinary action and to pass the impugned order of dismissal against the respondent. In this regard, advertence is made to Sec. 16 of the General Clauses Act. In support of this submission, reliance is placed upon ***S.R. Tewari vs. District Board, Agra now the Antarim Zila Parishad, Agra through its Secretary & Anr.*** (1964) 3 SCR 55 and ***Union of India vs. Gurbaksh Singh & Anr.*** (1975) 3 SCC 638. Ld. counsel for the petitioner submits that in case of conflict between the Act and the Regulation, the Act would prevail over the Regulation. It is also the plea of the petitioner that the Regulations of 1959 cannot override the amended statutory provisions. In support of this plea, reliance is placed upon ***National Stock Exchange Member vs. Union of India***, 2005 (85) DRJ

298. Reliance is also placed upon ***B.S. Khurana & Ors. vs. Municipal Corporation of Delhi***, (2000) 7 SCC 679 and ***MCD vs. C.M. Vij***, (2013) SCC OnLine Delhi 3793 in support of the submission that the Commissioner being the Chief Executive of the Corporation, is competent to act as the Disciplinary Authority. Assailing ***G.S. Matharoo*** (supra) on which the impugned judgment of CAT is founded, the appellant has also contended that in ***G.S. Matharoo*** (supra), the material changes brought in by way of amendments to the Act in 1993 were not considered in detail, and the judgment in that case had proceeded mainly on the premise that there was no amendment of the Regulations, 1959, and the proposal to amend the Regulations – post the Amendment of the Act in 1993 had been rejected. For the same reasons, it is also contended that the judgment of the Division Bench of this Court in ***MCD vs. Ved Prakash Kanoji***, 2013 SCC OnLine Del 791 was not a binding precedent on the legal proposition under consideration.

6. On behalf of the respondent, learned counsel supports the impugned order and the decision of the learned Single Judge in ***G.S. Matharoo*** (supra). He submits that the said decision has been approved by the Division Bench in ***Ved Prakash Kanoji*** (supra), and the said decision constitutes a binding precedent on this bench of co-equal strength. He submits that the competent authority to impose the major penalty, which has come to be imposed upon the respondent, was the Corporation and not the Commissioner, and, therefore, the impugned order of dismissal of the respondent passed by the Commissioner was bad in law. Learned counsel submits that in the absence of the Regulations framed in pursuance of the amendments carried out in

Sec. 59 w.e.f. 01.10.1993, vide Act 67 of 1993, the Regulations, 1959, would prevail.

7. We have considered the respective submissions and ourselves delved deep into the matter.

DISCUSSION

8. The Delhi Municipal Corporation Act, 1957 (The Act) as originally enacted, inter alia, provided that for efficient performance of its functions, there shall be several Municipal Authorities under the Municipal Corporation (see Section 44). The Municipal Authorities included the Standing Committee and the Commissioner (See Section 44 (a) & (e)). Section 54 of the Act provided that the Central Government shall by notification in the Official Gazette, appoint a suitable person as the Commissioner of the Corporation. The tenure of appointment of the Commissioner was stipulated as 5 years in the first instance, which could be renewed from time to time for a term not exceeding one year at a time. The power of removal of the Commissioner from office also vested in the Central Government under Section 54(3). Section 59 set out functions of the Commissioner. It provided as follows:

> "59. *Save as otherwise provided in this Act,* ***the entire executive power for the purpose of carrying out the provisions of this Act*** *other than those pertaining to the Delhi Electric Supply Undertaking or the Delhi Transport Undertaking* ***and of any other Act for the time being in force which confers any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also*** –

(a) ***exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force****;*

(b) ***prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees*** *other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them* ***and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service****;*

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget-grant;

(d) exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) or the General Manager (Transport) in his absence or on failure by him to exercise or perform the same."
(emphasis supplied)

9. Thus, the Commissioner had the status of being one of the named Authorities under the Act; he was appointed by the Central Government, and; he could be removed by the Central Government. He was also vested with the entire executive power for the purpose of carrying out, inter alia, the provisions of the Act (other than those pertaining to Delhi Electric Supply Undertaking).

10. Clause (b) of Section 59 vested the power in the Commissioner to prescribe the duties of, and *exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees,* other than the Municipal Secretary and Municipal Chief Auditor and the Municipal officers and other municipal employees immediately subordinate to them. Pertinently, subject to any regulation that may be made in that behalf, he was also entitled to dispose of all questions related to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service.

11. Section 89 of the Act – which falls in Chapter VI under the heading "**Municipal Officers and Other Municipal Employees**", stipulated the appointing authority of the various municipal officers and employees. The said Section read as follows:

> *"89. (1)**The Corporation shall appoint** suitable persons to be respectively the Chief Engineer (Water Supply), the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor **and may appoint one or more Deputy Commissioners** and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by the Corporation.*
>
> *(2) The appointment of the Municipal Chief Auditor shall be made with the previous approval of the Central Government and every other appointment referred to in sub-section (1) except that of the Municipal Chief Accountant and the Municipal Secretary shall be subject to confirmation by that Government:*

Provided that the Municipal Chief Auditor shall not be eligible for any other office under the Corporation after he has ceased to hold his office." (emphasis supplied)

12. Thus, under the Act as originally framed, so far as the appointment of the Chief Engineer (Water Supply), Municipal Engineer, Municipal Health Officer, Education Officer, Municipal Chief Accountant, Municipal Secretary and Municipal Chief Auditor is concerned, the power to make the said appointments vested in the Corporation. The Corporation was also empowered to appoint one or more Deputy Commissioners and such other officer or officers "*of a status equivalent to or higher than the status of any of the officers specified*" in sub section (1). The Corporation was, thus, entrusted with the power to appoint all superior officers of the Corporation.

13. Section 92 of the Act, as originally framed, reads as follows:

"92. (1) ***Subject to the provisions of Section 89 the power of appointing municipal officers and other municipal employees, whether temporary or permanent,–***

(a) to posts carrying a minimum monthly salary (exclusive of allowances) of three hundred and fifty rupees or more shall vest *–*

(i) in the Delhi Electric Supply Committee, the Delhi Transport Committee and the Delhi Water Supply and Sewage Disposal Committee respectively in the case of officers and other employees appointed in connection with the affairs of the Delhi Electric Supply Undertaking, the Delhi Transport Undertaking and the Delhi Water Supply and Sewage Disposal Undertaking,

(ii) ***in the Corporation in the case of all other municipal officers and employees****;*

(b) ***to posts carrying a minimum monthly salary (exclusive of allowances) of less than three hundred and fifty rupees, shall vest in the General Manager (Electricity), the General Manager (Transport), or the Commissioner, as the case may be****:*

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor, whose minimum monthly salary (exclusive of allowances) is less than three hundred and fifty rupees, shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to such Secretary or Auditor, whose minimum monthly salary (exclusive of allowances) is not more than two hundred and fifty rupees.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees." (emphasis supplied)

14. Thus, a very limited power of making appointments was vested in the Commissioner. Only in respect of categories of Municipal Officers and employees whose appointing authority was not otherwise specified, the Commissioner was empowered to make appointments where the minimum monthly salary *was less than* Rs.350/- (exclusive of allowances). Practically all positions of authority were kept out of the purview of appointment by the Commissioner.

15. Section 95(1) of the Act, as originally framed, reads as follows:

> *"(95) (1)* ***Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations:***
>
> ***Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed****:*
>
> *Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.* (emphasis supplied)

16. Thus, it would be seen that the Municipal Officers and employees were liable to be subjected to punishment of reduction in rank, compulsory retirement, removal or dismissal. However, such punishment could not be inflicted by an authority subordinate to that by which they were appointed. The Disciplinary Authority could *"be prescribed by regulations*:", obviously, subject to compliance of the aforesaid condition.

17. The power to make Regulations in respect of certain matters was vested in the Corporation vide Section 98. Section 98(1) of the Act as originally framed, inter alia, read as follows:

> *"98. (1) The Corporation may make regulations to provide for any one or more of the following matters, namely:-*
>
> *(a)……..*
>
> *(b)……..*

(c)…….

(d) the procedure to be followed in imposing any penalty under sub-section (1) of section 95, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension may be ordered; the officer or authority to whom an appeal shall lie under sub-section (4) of that section;

any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of persons appoint (e) ed to services and posts under the Corporation and any other matter for which in the opinion of the Corporation provisions should be made by regulations."

18. Section 480 of the Act provided that the Central Government may make any Regulation, which the Corporation was empowered under the Act to make, within one year of the establishment of the Corporation. Any regulation so made could be altered, or rescinded by the Corporation in the exercise of its powers under the Act. It also provided that no Regulation made by the Corporation under the Act shall have effect, until it has been approved by the Central Government and published in the Official Gazette.

19. In the aforesaid background, the Central Government, while exercising its power vested by Section 480 read with Section 98 of the Act, framed the Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959 (Regulations of 1959) vide notification No. 19.17.58 published in the Delhi Gazette Part IV (Extraordinary) dated 04.04.1959.

20. The Regulations of 1959, framed under Section 480 read with Section 98 of the Act, and in pursuance of Section 95 of the Act (which permitted the nomination of the Disciplinary Authority in respect of Municipal

Officers and other Municipal Employees), named several Municipal Authorities and Officers as the Disciplinary Authority. The Commissioner was named as the Disciplinary Authority in respect of some of the Municipal Officers and other Municipal Employees. Regulation 7 and the Amended Schedule (as amended vide DMC Service (Control & Appeal) (Amendment) Regulations, 1976), in so far as they are relevant, read as follows:

> *"7. **Disciplinary Authorities and Appellate Authorities**.– The authority specified in column 1 of the schedule may impose on any of the municipal officers or other municipal employees specified there against in column 2 thereof any of the penalties specified there against in column 3 thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in column 4 of the said schedule.*
>
> *SCHEDULE*
> *(See Regulation 7)*

Description of posts	*Authority competent to impose penalties*	*Penalties*	*Appellate Authority*
1	*2*	*3*	*4*
	PART 'A'		
In case where appointments are made under Section 509			
All Municipal officers & other employees	*Corporation*	*(i), (ii) & (iii)*	*Central Government*
All Municipal officers & other employees	*Central Government*	*All.*	*President of India*

PART'B'

Posts under the Corporation: *(Other than those under the Municipal Chief Auditor or the Municipal Secretary)*			
(1) Category 'A' posts	*Corporation*	*All.*	*Central Government*
-do-	*Deputy Commissioner*	*(i), (ii) & (ii)*	*Commissioner.*
(2) Category 'B' & 'C' posts	***Commissioner***	***All***	*Standing Committee*
(i) Where appointment of the officer or employee was made by the erstwhile local bodies or authorities specified in the second schedule of the Act.	*Deputy Commissioner*	*(i), (ii) & (iii)*	*Commissioner*
	Any Municipal Officer or employees to whom powers to impose penalty is delegated under Section 491 of the Act.	*(i), (ii) & (iii)*	*Deputy Commissioner*
(ii) ***Where the appointment was made by the Commissioner***	*Commissioner*	*All*	***Standing Committee***
	Deputy Commissioner	*(i), (ii) & (iii)*	*Commissioner.*
	Any Municipal Officer or employees to whom powers to impose penalty is delegated under Section 419 of the Act.	*(i), (ii) & (iii)*	*Deputy Commissioner*
(iii) Where the appointment was made by the Deputy Commissioner	*Deputy Commissioner*	*All*	*Commissioner*
	Any Municipal Officer or employees to whom powers to impose penalty is delegated under Section 419 of the Act.	*(i), (ii) & (iii)*	*Deputy Commissioner.*

(emphasis supplied)

21. At the cost of repetition, we may observe that even under the Act as originally framed, the Commissioner was appointed by the Central Government; could be removed by the Central Government, and; was statutorily named and recognized as the custodian of the entire executive power of the Corporation for the purpose of carrying out the provisions of the Act (other than those pertaining to the Delhi Electric Supply Undertaking), or under any other Act in force which conferred any power, or imposed any duty on the Corporation. He could exercise all powers and perform all the duties specifically conferred or imposed upon him by the Act, or by any other law for the time being in force. He was also empowered to prescribe the duties of, and exercise supervision and control over the acts and proceedings of all the municipal officers and other municipal employees, except those specifically excluded in Section 59(b) of the Act.

22. The aforesaid scheme of things, it appears, made the Commissioner a toothless tiger in as much, as, though he was charged with the responsibility of carrying out the provisions of the Act and implementing the same; named as the custodian of the entire executive power for the said purpose; was also empowered to prescribe the duties of, and exercise supervision and control over the acts and proceedings of all municipal officers and employees, he did not have the power to take any disciplinary action against a large section of even the medium rung – let alone the senior and highly ranked officers and employees of the Corporation, who indulged in breach of any departmental regulations, or of discipline or of carelessness, or those who were unfit or neglected their duty or indulged in any other misconduct. He

could take action and crack the whip only in respect of a section of municipal officers and other Municipal employees who were lowly ranked. As noticed from the aforesaid schedule, he was nominated as the Disciplinary Authority in respect of employees holding category "B" and "C" posts only.

23. The Act was amended, inter alia, in the year 1993 by the Delhi Municipal Corporation Amendment, 1993, i.e. Act No. 67 of 1993.

24. The Bill No. 66 of 1993 introduced in the Lok Sabha, which eventually was passed and became the Delhi Municipal Corporation (Amendment) Act, 1993, contained the statement of Objects and Reasons which, inter alia, read as follows:

> *"**The need for reorganization of administrative and municipal set up in Delhi was being felt and the matter has been under the consideration of the Government for some time**. For making an in-depth study, the Government appointed a Committee to go into the various issues connected with the administrative and municipal set up of Delhi and to recommend measures, inter alia, for streamlining of the municipal set up. **The Committee on re-organisation of the Delhi set up (popularly known as Balakrishnan Committee) went into the matter in great detail and recommended a decentralized municipal administration.**" (emphasis supplied)*

25. From the above, it would be seen that the amendments to the Act were proposed in 1993, inter alia, on the basis of the **S. Balakrishnan Committee Report** – which recommended measures for, inter alia, "*streamlining of the Municipal set-up*". Chapter IV of Part I of the **S. Balakrishnan Committee**

Report enlists "*Drawbacks and Deficiencies in the Existing Set-Up*". In relation to the Delhi Municipal Corporation, it was, inter alia, stated:

> *"In 1966, when the elected representatives were made responsible to some extent for the administration of Delhi the Act did not confer powers of control or supervision over the Corporation by the Delhi Administration, despite the fact that local self-government is a transferred subject. In the view of some, this has resulted, to some extent, in the un-coordinated functioning of various services under the Corporation. It also appears that this shortcoming in the Corporation set-up coupled with* ***the present scheme of relationship between the Commissioner of Municipal Corporation and the officials under him on the one hand and the Mayor on the other as incorporated in the Act has contributed to lack of control and coordination which are so necessary for the efficient functioning of a local body of the nature of the Municipal Corporation of Delhi. Further details of the deficiencies in its working will be found in Part II of the Report.****"* (emphasis supplied)

26. Chapter XI in Part-II of the **S. Balakrishnan Committee Report** specifically deals with the Municipal Corporation of Delhi. A perusal of the said report would show that the said Committee strongly advocated and recommended the division of the Municipal Corporation of Delhi into several corporations. The Committee gave several arguments to support its said recommendations. It observed in paragraph 11.5.7, inter alia, as follows:

> *"11.5.7 We will now take up for consideration the second suggestion, namely that the monolithic Municipal Corporation of Delhi should be abolished and the municipal services entrusted to separate municipalities set up at various centres in Delhi.* ***There are several arguments to support this and these are briefly set out below****:-*

(i) ……

(ii) ……

(iii) ……

(iv) ……

(v) ……

(vi) ***We have reasons to believe that, even for the most dynamic Commissioner, the administration of the Corporation has become extremely difficult. This is mainly because of hostile postures reported to have been adopted by the Councilors towards the Commissioner and the executive wing and also because of the problems posed by the staff in the Corporation who cannot, under the present conditions, be easily transferred to other places. As a result, we have been told, vested interests have developed among some of the members of the staff dealing with important segments of work who manage to maintain close contacts or influence with powerful Councilors. Enforcement of discipline has become difficult as a consequence, and this breeds corruption and inefficiency.*** *If, instead of one monolithic Corporation, there are a number of smaller municipalities in Delhi at various centres, it could be possible for transfers of personnel from one place to another, thereby restricting the scope for vested interests to develop at least to some extent."* (emphasis supplied)

27. Thus, it would be seen that the **S. Balakrishnan Committee** recognized the position that even for the most dynamic Commissioner, the administration of the Corporation had become extremely difficult, mainly, because of the hostile postures reported to have been adopted by the Councillors towards the Commissioners and the Executive Wing.

28. The Councillors form the elected/ political arm of the Corporation (See Section 3 of the Act). The Municipal Government of the area of the Corporation vests in the Corporation (See Section 41). Sections 42 and 43 of the Act set out the obligatory and discretionary functions of the Corporation. A perusal of these sections show that the Corporation – which consists of Councillors and Aldermen, is the policy making Authority, whereas the Executive Authority primarily vests in the Commissioner by virtue of Section 59 of the Act.

29. The Committee also recognized and documented the fact that under the then existing dispensation, the staff in the Corporation could not be easily transferred. The Committee took note of the situation that vested interests had developed amongst some members of the staff dealing with important segments of work, and they managed to maintain close contact with, and had influence over powerful Councillors. The Committee also recognized the fact that enforcement of discipline had become difficult as a consequence, and that bred corruption and inefficiency. The Committee argued that if a number of smaller municipalities are set up in Delhi at various centers, it would be possible to transfer the personnel from one place to another, thereby restricting the scope for vested interests to develop, at least, to some extent.

30. The aforesaid extracts from the report of the **S. Balakrishnan Committee** are extremely telling and relevant to understand the background in which the Act was amended by the Delhi Municipal Corporation (Amendment) Act. 1993. The reins of the Executive wing of the Corporation were placed in the hands of the Commissioner. Yet he could

not function effectively due to influences of the Councillors, who provided a protective shield to the delinquent Municipal Officers and other Municipal employees against disciplinary action. The Councillors did not permit the Commissioner to set his house in order. Evidently, the Parliament recognized the serious structural deficiencies in the pre-existing Act, inter alia, in relation to the management and supervision of the working of the Municipal Officers and other municipal employees, and in relation to maintenance of discipline and efficiency in the Corporation. Rather than agreeing to create several smaller corporations (As suggested by the **S. Balakrishnan Committee Report**, inter alia, to deal with the aforesaid structural lacuna in the Corporation), the Parliament chose to deal with – more effectively and directly, the aforesaid problem by, firstly, vesting the power of appointment of Municipal Officers and other municipal employees (except those in respect of whom specific provision was made) in the Commissioner and, simultaneously vesting the power to act as the Disciplinary Authority – in respect of all Municipal Officers and other Municipal Employees (except the specifically excluded ones), in the Commissioner.

31. In so far as it is relevant, amended Section 59 reads as follows:

> ***"59. Functions of the Commissioner Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act *** *** and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also—***

(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees *other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and* ***subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service****;*

(c) ……

(d) ***subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees.*** *"*(emphasis supplied)

32. Post amendment by Act 67 of 1993, Section 92 of the Act reads as follows:

"92. Power to make appointments

(1) Subject to the provisions of section 89, ***the power of the appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:*** *Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:*

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees." (emphasis supplied)

33. Thus, the appointment of all Municipal Officers and employees, other than those in respect of appointing authority is otherwise stipulated, vests in the Commissioner after the Amendment of the Act by Act 67 of 1993.

34. The amendment, particularly to Sections 59 and 92 of the Act by the Delhi Municipal Corporation (Amendment) Act, 1993, has to be viewed in the context that it sought to remove several defects and deficiencies in the statutory scheme with regard to the hierarchical structure of the Corporation, and the functioning of the Corporation; the Commissioner, and; its officers/ employees. It is the above noted *mischief* – as taken note of by the **S. Balakrishnan Committee**, which was sought to be remedied by amendment of, inter alia, Sections 59(d) and 92 of the Act. It is in the aforesaid light that the powers vested in the Commissioner by the amendment to Section 59 have to be viewed and interpreted.

35. The argument of the respondent, which has found favour with the Tribunal is that even after amendment of Section 59 of the Act, the power of the Commissioner to act as the Disciplinary Authority in relation to all Municipal Officers and other Municipal Employees is subject to "*any regulation that may be made in this behalf*", and that, the Regulations of 1959 are the Regulations referable to the amended Clause (d) of Section 59. Consequently, the power of the Commissioner to act as the Disciplinary Authority – even after amendment of Section 59 vide Act 67 of 1993, is

subject to the pre-existing Regulations of 1959. This argument has been accepted by the Tribunal, by placing reliance on ***G.S. Matharoo*** (supra).

36. The issue that arises for consideration is whether the expression "*regulation that may be made in this behalf*" used in Clause (d) of Section 59 of the Act refer to the pre-existing Regulations of 1959, or they refer to Regulations that "*may be made*" in future i.e. after the amendment of the Act by the Delhi Municipal Corporation (Amendment) Act, 1993 i.e. Act 67 of 1993. On a plain grammatical reading, the meaning of the expression "*regulation that may be made in this behalf*" refer to regulation that may be made on and from the date the legislation (i.e. the amended clause (d) of Section 59) was brought into force. It refers to regulation that may be made henceforth, in future.

37. ""*May," like "shall," may denote futurity, e.g. a gift to the children of the members of a class "who may die in my lifetime"*"" (Re Hotchkiss, L.R. 8 Eq. 643). The Court held that the said expression would not include children of member of such class who were already dead at the date of the will. (See ***Stroud's Judicial Dictionary*** Vth Edition Volume III Paragraph (69) at page 1574.)

38. On the same page, the learned author has also included the meaning of the expression "*May be*". One of the meanings contained in the said dictionary of the expression "*May be*" is the following:

> *"(1)(a) Guarantee of "any balance that may be due," construed by Pollock C.B., and Martin B. (dissenting, Bramwell B.),* ***as referring to a future balance*** *(Broom v. Batchelor, 25 L.J. Ex. 299). Pollock C.B., said: "****'May be' is, in my***

judgment, clearly future. *I have been unable to find direct authority in any dictionary, but in Cruden's Concordance of the Bible, from sixty to eighty references are given, and the expression* ***'may be' is found in various parts of the Bible, nine out of ten of which have manifestly a reference to the future, and not to the past or present,*** *and not one is necessarily future. The Concordance of Shakespeare gives no references in respect to the words 'may' and 'be.' But as far as I can bring my knowledge of the English language to bear upon the subject,* ***'may be' is much oftener used with reference to the future than the past or the present.****"* (emphasis supplied)

39. Another instance where the words "*may be*" were interpreted contained at page 1575 of the same volume, reads as follows:

"(2) Semble, a testamentary gift to such members of a class as "may be born" has a similar meaning to one where the phrase is "to be born." In Storrs v. Benbow (22 L.J. Ch. 825), Cranworth C., said that such a gift, for children, might be interpreted in three ways – it might mean children (i) in esse at the date of the will, or (ii) that might come into being in the lifetime of the testator, or (iii) that might be born at any time. The last meaning must, generally, be rejected because "a line must be drawn somewhere, otherwise the distribution of the testator's estate would be stopped and executors would not know how to act," and the amount required would be indefinite. The second interpretation, when expanded to include children en ventre at the death of the testator, is probably the more general meaning: " I think it clear that ***the expression 'may be born' may include children already born; but I rather lean to the opinion – which I collect from the judgment in Early v. Benbow, 2 Coll. 342, to have been that of my learned brother – that the words themselves, in the absence of any context to explain them, are to be taken as words of futurity"*** *(per Turner L.J., Townsend v. Early, 3 D.G.F. & J.11).* (emphasis supplied)

40. The Regulations of 1959 already existed when the Act was amended in 1993. If the Parliament intended to make the amended Clause (d) of

Section 59 subject to the existing Regulations of 1959, it would have used the expression "*Regulation made in this behalf*", because the Regulations of 1959 cannot be described as those that have been made in pursuance of the amended clause (d) of Section 59.

41. The Parliament was conscious of the existing statutory provisions, including the Regulations of 1959 - which were also framed by the Central Government, and the fact that under the Act and the Regulations of 1959 as originally framed, the Commissioner was not designated as either the Appointing Authority, or the Disciplinary Authority in respect of a large section of Municipal Officers and other Employees, particularly, the senior and high ranked officers and other employees who are classified as Category 'A' Officers. If the Parliament intended to continue to deprive the Commissioner from acting as the Disciplinary Authority in respect of Municipal Officers and other employees – except to the limited extent stipulated in the Regulations of 1959, the Parliament would not have designated the Commissioner as the Disciplinary Authority in relation to all Municipal Officers and other Municipal Employees by amending/ substituting Clause (d) of Section 59 of the Act. Moreover, the Parliament would not have used the expression "*Regulation that may be made in this behalf*" in Clause (d) of Section 59. Clause (d) of Section 59 would have simply read "*Subject to any regulation, be the Disciplinary Authority in relation to Municipal Officers and other Municipal Employees*."

42. Pertinently, the Parliament was conscious of the pre-existing Section 95. Section 95, in so far as it is relevant, remained unchanged pre and post

the amendment carried out vide Act 67 of 1993. The relevant extract thereof reads as follows:

> *"95. Punishment for municipal officers and other employees – (1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct* ***by such authority as may be prescribed by regulations****:*
>
> *Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed:"* (emphasis supplied)

43. If the Parliament intended to limit the power of the Commissioner in clause (d) of Section 59 by the pre-existing Regulation of 1959, it need not have consciously used a markedly different expression, and could have adopted the same expression as used in Section 95. However, it has consciously chosen to use an expression which contra indicates the super imposition of the Regulations of 1959, over the specific power conferred by Parliament on the Commissioner for the first time by Amendment of the Act in 1993.

44. It is well settled that the words used in a statute should be given a meaning, and an interpretation, whereby they are not rendered superfluous. In ***Royal Hatcheries Pvt. Ltd. and Ors. v. State of A.P. and Others***, 1994 Supp. (1) SCC 429, the Supreme Court held:

> *"8. Another rule of construction which is equally well established is that the Court would not adopt a construction*

which would render some of the words in a statutory provision nugatory and/or superfluous… … …"

45. If Clause (d) of Section 59 of the Act were to be interpreted to mean that the authority/ jurisdiction of the Commissioner to act as the disciplinary authority in relation to all municipal officers and other municipal employees is subject to the pre-existing regulations, that would render the words "*that may be made in this behalf*" redundant, as the pre-existing regulations of 1959 do not qualify as regulations "*that may be made in this behalf"* post amendment of Section 59(d) of the Act in 1993.

46. We may refer to the decision of the Supreme Court in ***Union of India and Another v. C. Dinakar, IPS and Others***, (2004) 6 SCC 118. In this case, the Union of India contended before the Supreme Court that the procedure adopted by it for appointment to the post of Director, CBI was in accordance with the Rules, namely CBI (Senior Police Posts) Recruitment Rules, 1996 framed under proviso to Article 309 of the Constitution of India. It was contended that the said rules had not been declared invalid by the Supreme Court while issuing directions in the case of ***Vineet Narain v. Union of India***, (1998) 1 SCC 226. On the other hand, it was contended on behalf of the respondent that in ***Vineet Narain*** (supra), it had been highlighted that the CBI had not been functioning properly, necessitating constitution of an independent review committee. Had it been the intention of the Supreme Court in ***Vineet Narain*** (supra) that the procedure laid down in 1996 Rules should be followed, it would not have directed that the matter be considered by an independent committee – something not contemplated under the 1996 Rules. The Supreme Court disagreed with the submissions

advanced by the learned Attorney General on behalf the Union of India. It took note of the fact that on the basis of the judgement in ***Vineet Narain*** (supra), the Union of India had promulgated an Ordinance, which prescribed the process of selection to the post of Director, CBI. The Supreme Court held that on the promulgation of the Ordinance "*a subordinate legislation in the form of the 1996 Rules would cease to exist as the Ordinance provides for the process of selection to the post of Director, CBI*." The Supreme Court took note of the Parliamentary approval granted to the Ordinance with the enactment of the Central Vigilance Act, 2003, which received Presidential assent on 11.09.2003. In paragraph 19 of this decision the Supreme Court, inter alia, observed:

> *"19. From the above it is clear that the procedure laid down in the Rules is inconsistent with the directions issued by this Court in Vineet Narain [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] . As noticed hereinbefore, the said directions were issued pending legislation in this behalf by the Parliament. Once by reason of a parliamentary Act, the procedure for appointment of the Director, CBI has been laid down, it is idle to contend that the 1996 Rules would still survive."*

47. In our view, the same principle is attracted in the present case.

48. A learned Single Judge (*S.B. Sanyal, J.*) of the Patna High Court, in ***Amrapali Films Ltd. v. State of Bihar and Ors.***, 1985 SCC OnLine Pat 114 **:** 1986(34) BLJR 124, considered a similar issue. The learned Single Judge in this decision, observed as follows:

> *"**12. I would first like to deal with the question, namely, if the rules are made under a statute, sections of which are later repealed or re-enacted in another form, can the prior rules be***

made applicable to the re-enacted section? *Section 21 of the Act provides the power to make rules. It states that the State Government may make rules consistent with the Act for securing the payment of entertainments tax and generally for the purpose of carrying into effect the provision of the Act. Section 21(2)(d) requires. "In particular and without prejudice to the generality of the foregoing power," the State Government may make rules (d) prescribing the conditions subject to which and the manner in which the tax shall be compounded under sub-section (5) of section 3." It may be noticed that clause (d) expressly referred to section 3(5) and has been amended by Bihar Act 5 of 1973. The rules, therefore, have been made for carrying out the purposes of section 3(5) of the Act.* ***By the amending Act of 1973 the Act as a whole was not repealed but certain sections were rearranged and some sections or sub-sections were inserted. It is true that the rules were framed prior to the amendment of the Act. Can it be said that the rules became inapplicable to such of the provisions which came to be incorporated after the framing of the rules, and thus the rules as a whole become incompetent for no consequent amendment therein and/or what is the effect of the rules in such a situation.*** *From the very opening words of section 21 it is manifest that the rules are framed for securing payment of tax and to carry into effect the provision of the Act. To my mind the rules in a situation of that kind can still continue to operate to the extent indicated here.* ***If the rules become inconsistent with the amended provision of the Act, Courts will cut down the rules so as not to conflict with the amended provision of the Act because it is well settled that if a statute is repealed and re-enacted in a <u>wider</u> form the old rules so far as they are continued are not thereby enlarged-See Canadian Pacific Steamships Ltd. v. Bryers (1958 Appeal Cases 485-House of Lords). Similarly if rules are made under a statute, sections of which are later repealed and re-enacted in a narrower form, the rules must be cut down so as not to conflict with the narrower statute-See. In re Simpkin Marshall Ltd. (1959 Chancery 229). It is, therefore, laid down that the rule making power is limited to what is stated in the***

section of the Act—See Sant Saran Lal v. Parasuram (A.I.R. 1966 Supreme Court 1852). It is common knowledge that in spite of complete amendment of the Act the old rules are continued in force by incorporation of a saving clause and if it is not so done by operation of section 27 of the Bihar and Orissa General Clauses Act 1917, which lays down that where any enactment is repealed and re-enacted by a Bihar and Orissa Act, then unless it is otherwise expressly provided, any rule, bye-law etc., issued under the repealed enactment shall so far as it is not inconsistent with the provision re-enacted, continue in force and will be deemed to have been made by or issued under the provision so re-enacted unless and until it is superseded by issuance of a new rule under the provisions so re-enacted. As a logical corollary the rules cannot be attacked as being inoperative or ultra vires since the rule making authorities did not have before them, while framing the rules, the amended provisions of the new Act. The 1949 Rules, therefore, did not come to an end by virtue of amendment of certain provisions of the main Act. However, the constitutionality of a rule and/or a regulation has to be adjudged by a three fold test, namely, (1) whether the provisions of such a regulation fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. *In considering the first test what is required to be seen is whether a broad principle of delegated legislation, be that a rule or regulation or any other type of statutory instrument or instruction, is in excess of the power of subordinate legislation conferred on the delegate, by referring to the specific provision embodied in the relevant statute conferring the power to make rules, regulations etc., and also the object and purposes of the Act can be gathered from the various provisions of the enactment. It does not require any meticulous examination but broadly to find out whether the rules fall within the scope and ambit of the power conferred by*

the statute on the delegate—See Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth ((1984) 4 SCC 27 : A.I.R. 1984 Supreme Court 1543).” (emphasis supplied)

49. We find support from the above decision in the view we take.

50. If the Regulations of 1959, in so far as they deal with the aspect – who the Disciplinary Authority is in relation to all Municipal officers and other Municipal employees, were to still prevail i.e. even after the amendment of the Act vide an Act – 67 of 1993, there was no purpose of bringing about the said amendment. The very object and purpose of the amendment – which was to enlarge the scope of the authority of the Commissioner, and to empower him to carry out his statutory obligations would be defeated if, despite the amendment in the Act, his power to take disciplinary action were limited by reference to the Regulations of 1959, which were framed when the Act – as originally enforced, was materially different. In ***Kanwar Singh & Others Vs. The Delhi Administration***, AIR 1965 SC 871, the Supreme Court observed:

> *“... ... ... It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute would defeat the object of the legislature, which is to suppress a mischief the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief, (see Maxwell on Interpretation of Statutes, 11th Edn. pp. 221-24 and 266).”*

51. In ***Doypack Systems Pvt.Ltd. v. Union of India***, (1988) 2 SCC 299, the Supreme Court emphasized that the Objects and Reasons of the Statute

should be taken into consideration in interpreting the provisions of a Statute. It, inter alia, observed:

> *"42. It has to be reiterated, however that the Objects and Reasons of the Act should be taken into consideration in interpreting the provisions of the statute in case of doubt. This is the effect of the decision of this Court in K.P. Varghese v. ITO [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : AIR 1981 SC 1922 : (1982) 1 SCR 629] where this Court reiterated that the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has been reiterated that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. See in this connection the observations of this Court in Chern Taon Shang v. Commander S.D. Baijal [(1988) 1 SCC 507 : 1988 SCC (Cri) 162]…. … … It is certainly relevant to know the mischief that was intended to be remedied. ……. This Court has to interpret the Act on the basis of informed basis by applying external and internal aids if the language is ambiguous. In the words of Lord Scarman: "We are to be governed not by Parliament's intentions but by Parliament's enactments." See Cross Statutory Interpretation 2nd Edn., p. 22. Blackstone in his "Commentaries on the Laws of England" (Facsimile of 1st edn. 1765, University of Chicago Press 1979) Vol. 1 at 59 suggested:*
>
> > *"The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and consequence, or the spirit and reason of the law.""*

52. The *mischief* rule of interpretation also does not support the conclusion that the Regulations of 1959 cloud the power of the Commissioner to act as the disciplinary authority. In the case at hand, looking to the *mischief* that the amendments brought about by Act No. 67 of 1993 sought to remedy, the only interpretation that the words "*regulation that may be made in this behalf*" can be given is that the said expression refers to Regulations that may be made in future i.e. post the amendment of the Act vide Act No. 67 of 1993.

53. The *mischief* rule was explained in the ***Bengal Immunity Co. V. State of Bihar***, AIR 1955 SC 661 by S.R. Das, C.J. as follows:

> *"23**.** It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case [3 Co. Rep 7a : 76 ER 637] was decided that—*
>
> > *"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:*
> >
> > *1st. What was the common law before the making of the Act.*
> >
> > *2nd. What was the mischief and defect for which the common law did not provide.*
> >
> > *3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and*
> >
> > *4th. The true reason of the remedy; and then **the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle***

> ***inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bona publico."*** (emphasis supplied)

54. Reference may also be made to ***Commissioner of Income- Tax, Madhya Pradesh and Bhopal v. Shrimati Sodra Devi***, AIR 1957 S.C. 832, where *Bhagwati, J*., while applying the mischief Rule, observed:

> "*In order to resolve this ambiguity therefor we must of necessity have resort to the state of the law before the enactment of the provisions; the mischief and defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect and; the true reason of the remedy.....*"

55. Thus, we are of the considered view that the words "*Regulation that may be made in this behalf*" contained in Clause (d) of Section 59 of the Act refer to Regulations that may be made in future on the aspect – who is the Disciplinary Authority in relation to Municipal Officers and other Municipal Employees, after the re-enactment of clause (d) of Section 59 of the Act vide the Act No.67 of 1993, and the pre-existing Regulations of 1959, in so far as, they are inconsistent with the power vested in the Commissioner to act as the Disciplinary Authority in relation to Municipal Officers and other Municipal Employees cease to be of any effect.

56. Pertinently, in the Act as originally framed, there was a vacuum in as much, as, the Act did not contain any provision designating any particular Municipal Authority as the Disciplinary Authority. It merely stipulated in Section 95 that every Municipal Officers or other Municipal Employees

shall be liable to be punished by such authority as may be prescribed by regulations, subject to the condition that no such officer or other employee shall be so punished by any authority subordinate to that by which he was appointed. In the aforesaid background, the Central Government exercised its power vested by Section 480 read with Section 98 of the Act, and framed the Regulations of 1959. However, after the amendment of the Act by Act No.67 of 1993, the position has undergone a sea change in as much as, Section 59(d) stipulates that the Commissioner shall act as the Disciplinary Authority in respect of all Municipal Officers and other Municipal Employees subject to Regulations that may be framed. Post Amendment, even if the regulations are not framed, there is no vacuum, as the Commissioner is named as the Disciplinary Authority of all Municipal Officers and other Municipal Employees, except in respect of whom, he cannot be the Disciplinary Authority. That apart, he is also named as the Appointing Authority of all Municipal Officers and other Municipal Employees by virtue of the amended Section 92, subject to the proviso to Section 92 and Section 89 of the Act. Thus, the Commissioner has the power to suspend and dismiss all such Municipal Officers and other Municipal Employees whom he has the power to appoint by virtue of Section 16 of the General Clauses Act, 1897. He would not act as the Disciplinary Authority of only those Officers/ employees, who are appointed by the Standing Committee, or the Corporation. But in all other cases, he is the Disciplinary Authority.

57. Neither Section 59(d) nor 95(1) of the Act contemplate that the framing of Regulations is imperative, post the amendment of the Act by Act

No. 67 of 1993, Regulations may, or may not be framed under the Act, as enabled by Section 59(d) and Section 95(1). It is for this reason that the expression used by the Parliament in Sections 59(d) and 95 (1) are "*that may be made*" and "*may be prescribed*", respectively. The failure to frame Regulations relatable to Section 59, or 95, does not leave a vacuum, since the Commissioner is declared to be the Disciplinary Authority in relation to all Municipal Officers and other Municipal employees – except those, whose appointing authority is otherwise stipulated. He is the Appointing Authority in respect of all Municipal Officers and other Municipal employees subject to Section 89 and proviso to Section 92. Thus, only in respect of Municipal authorities, Municipal officers and Municipal employees, whom the Municipal Commissioner is not empowered to appoint, and whose appointment is made by the Corporation or the Standing Committee, and where the Commissioner is subordinate to the Appointing Authority, he cannot act as the Disciplinary Authority, but in all other cases he is authorized and empowered to act as the Disciplinary Authority.

58. We are fortified in our view by the decision of the Supreme Court in ***Corporation of the City of Nagpur, Civil Lines, Nagpur and others v. Ramchandra and Others***, (1981) 2 SCC 714. In this case, the issue that arose for consideration was whether the Chief Executive Officer i.e. the Municipal Commissioner was competent to suspend the employee or whether the power to do so lay with the Municipal Corporation. The High Court was of the view that under the Rules and bye laws of the City of Nagpur Corporation Act, 1948, as amended upto date, the competent authority to pass orders of suspension against the respondents was the

Corporation itself, and not the Chief Executive Officer. It was contended on behalf of the appellant that the Municipal Commissioner was the competent authority to suspend the respondents pending departmental enquiry. The Supreme Court upheld the authority of the Commissioner to suspend the respondents, pending departmental enquiry. The Supreme Court in this decision, inter alia, observed as follows:

> ***"2**. This short point taken by Mr Sanghi was that under Section 59(3) of the Act, the Municipal Commissioner is the competent authority to suspend the respondents pending a departmental inquiry. On a perusal of Section 59(3) we are of the opinion that the contention is well founded and must prevail. Section 59(3) may be extracted thus:*
>
> > *"Subject, whenever it is in this Act expressly so directed to the approval or sanction of the Corporation or of the Standing Committee, and subject also to all other restrictions, limitations and conditions imposed by this Act,* ***the entire executive power for the purpose of carrying out the provisions of this Act vests in the Commissioner who shall also****—*
> >
> > *(a)* * * *
> >
> > *(b)* ***exercise supervision and control over the acts and proceedings of all municipal officers and servants, and, subject to the rules or by-laws for the time being in force, dispose of all questions relating to the services of the said officers and servants and their pay, privileges and allowances****." (emphasis supplied)*
>
> ***3.** Thus clause (b) of Section 59(3) in express terms authorises and clothes the Municipal Commissioner with the power to exercise supervision and control over the acts of municipal officers and servants. It may be noticed that the said clause (b)*

is preceded by the words 'vests in the Commissioner'. When the words 'control' and 'vests' are read together they are strong terms which convey an absolute control in the authority in order to effectuate the policy underlying the rules and makes the authority concerned the sole custodian of the control of the servants and officers of the Municipal Corporation. In the case of State of W.B. v. Nripendra Nath Bagchi [AIR 1966 SC 447 : (1966) 1 SCR 771] while interpreting a similar language employed in Article 235 of the Constitution of India which confers control by the High Court over District Courts, this Court held that the word 'control' would include the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

> *"The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."*

This view was reiterated in High Court of A.P. v. V. V.S. Krishnamurthy [(1979) 2 SCC 34 : 1979 SCC (L&S) 99 : AIR 1979 SC 193 : (1979) 1 SCR 26 cited in SCC and AIR by first party names as Chief Justice of A.P. v. L.V.A. Dixitulu)] where this Court clearly held that 'control' included the passing of an order of suspension and that the power of control was

comprehensive and effective in operation. In this connection, Sarkaria, J. speaking for the court, observed as follows: [SCC pp. 46 & 47: SCC (L&S) 110 & 111, para 40]

> *"The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:*
>
> *(a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, ...*
>
> *(ii) In Article 235, the word 'control' is accompanied by the word 'vest' which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court, being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority ....*
>
> *(iii) Suspension from service of a member of the judiciary, with a view to hold a disciplinary inquiry."(emphasis supplied)*

4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned*. In the*

aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word 'control'. On a parity of reasoning, therefore, the plain language of clause (b) of Section 59(3), as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court cannot be maintained and has to be quashed." (emphasis supplied)

59. The language found in Section 59 of the Act is *pari materia* with the language employed in Section 59(3) of the City of Nagpur Corporation Act, 1948 and, therefore, in our view the said decision leaves no manner of doubt that the Commissioner is vested with the power to take disciplinary action against all Municipal officers and other municipal employees, except those, who are appointed by an authority to whom the Commissioner is subordinate.

60. We may now deal with the decisions relied upon by learned counsels:

61. In ***Gurbux Singh*** (supra) – relied upon by learned counsel for the petitioner, the issue that arose for consideration before the Supreme Court was whether the Appointing Authority of the respondent was the Central Government or the State Government. The Supreme Court ruled that the Appointing Authority of the respondent was the Central Government and, consequently, it was the Central Government which was empowered to remove the respondent from service. The respondent – who was appointed

as the Assistant Settlement Commissioner to administer the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 could be removed only by the Central Government. In the course of this decision, the Supreme Court referred to ***S.R. Tiwari Vs. Distt. Board, Agra***, (1964) 3 SCR 55, wherein it had observed that:

> "*Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint.*"

62. The Supreme Court also referred to Section 16 of the General Clauses Act, wherein the aforesaid rule is incorporated.

63. ***B.S. Khurana*** (supra) is a decision of the Supreme Court, wherein the Supreme Court held that the power to dispose of the property belonging to the Corporation vested in the Commissioner by virtue of Section 200 of the Delhi Municipal Corporation Act. It disapproved the transfer made on the basis of the resolution passed by the Corporation, which was not agreed to by the Commissioner. While doing so, the Supreme Court held that the Scheme under the Act made it abundantly clear that the entire executive power for the purpose of carrying out the provisions of the Act vest in the Commissioner. The Supreme Court referred to the power of the Commissioner vested by Section 59 of the Act.

64. ***C.M. Vij*** (supra) is another decision relied upon on behalf of the petitioner. The issue that arose for consideration was whether on the strength of the resolution passed by the Corporation upgrading the pay scale in respect of the post of Engineer-in-Chief could take effect without the

concurrence of the Commissioner. The Division Bench held that such a resolution passed by the Corporation would be of no avail, in the light of the power vested in the Commissioner by clause (b) of Section 59 of the Act. The relevant extract from this decision reads as follows:

> "*13. In this case, it is not disputed that Resolution No. 428, passed by the Corporation, recommended the higher pay scale that Sh. Vij claimed. There is no material to show that it received the concurrence or approval of the Commissioner. Although the original proposal to upgrade the pay scale of Sh. Vij emanated from the Commissioner's office through letter No. F/33/CED/9/0/C&C dated 02.12.1999 (seeking the approval of the Corporation through the Standing Committee), yet, it remained a proposal and was never effected through that office. Quite to the contrary, after receiving the response of the Union of India on this question of upgradation (through the Union Government's letter dated 16.08.2002), the Commissioner by letter dated 08.10.2002 (No. F. 33/CED/2153/C&C) placed the question before the Corporation through the Standing Committee for approval. When the Standing Committee by Resolution No. 649 dated 23.10.2002 recommended that the pay scale be upgraded, the Commissioner (through the letter dated 21.11.2002, No. F. 33/CED/2437/C&C) disapproved and requested - as the learned counsel for Sh. Vij agrees - the Corporation to not approve the recommendation of the Standing Committee. Despite this, the Corporation passed Resolution No. 428 upgrading the pay scale.*
>
> *14. The question that arises, then, is whether the Corporation was competent under the DMC Act to pass Resolution No. 428 in the terms that it did without the concurrence of the Commissioner.*
>
> *15. There is no doubt that under Section 98 the power to make regulations regarding the salaries, allowances and other conditions of service of officers vests in the Corporation, subject to the conditions of prior consultation and approval, of the Commission, as the case may be, under clause (2) of that*

section. However, equally, the mandate of Section 59 is clear in that "any power (of) the Corporation ... shall vest in the Commissioner", the latter being the executive head. Thus, the legal entity that exercises the powers vested in the Corporation is the Commissioner under the DMC Act, who is the designated authority to make such decisions. In such cases, where the statute prescribes that a certain power is to be exercised by an authority, it must be exercised by that authority or not at all. Indeed, in considering the scope of Section 59, the Punjab and Haryana High Court in Moti Ram(supra) noted as follows:

> *"... the Commissioner is an authority under the Corporation ... he is the chief executive head and the entire executive power vests in him under Section 59 ..."*

This reading was also supported by the Supreme Court in Sh. B.S. Khurana v. Municipal Corporation of Delhi, (2000) 7 SCC 679, where the Court noted that:

> *"16. The scheme of the aforesaid Sections makes it abundantly clear that the entire executive power for the purpose of carrying out the provisions of the Municipal Corporation Act vests in the Commissioner. His functions and duties are statutorily prescribed. His appointment is also to be made by the Central Government by notification in the Official Gazette. Similarly, the functions of the Standing Committee and other committees are also prescribed. In the light of the aforesaid statutory provisions, we have to consider the scheme of Section 200 which empowers the Commissioner to dispose of the moveable property or grant lease of any immovable property or to sell the same subject to the conditions provided thereunder. On the condition of obtaining sanction of the Corporation, the power to transfer immovable property, the value of which exceeds fifty thousand rupees vests in the Commissioner. Result is-the Commissioner can transfer such*

immovable property only after obtaining sanction of the Corporation. Obtaining of sanction by the Commissioner is mandatory. The effect of the non-observance of the statutory prescription would vitiate the transfer. This would also mean that the power to dispose of the property would vest in the Commissioner and not in the Corporation. No specific power is conferred upon the Corporation for such transfer. The scheme envisages checks and balances for disposal of immovable property on the power of the Commissioner. In the light of the aforesaid interpretation of Section 200, it is not necessary for us to deal with other contentions raised and dealt with by the High Court. In the facts and circumstances of the case, at no point of time, Municipal Commissioner has decided or agreed to transfer the Municipal quarters in favour of its employees/allottees. There is no legal right to claim ownership on the basis of the resolutions passed by the Corporation as the said resolutions are without any power or authority. Hence, there is no substance in these petitions."

16. The question here is not of the correctness of Resolution No. 428 in terms of its content, as to whether Engineers-in-Chief should be entitled to a higher pay scale, but rather, whether the authority which took this decision possessed the requisite power under the statute. Under Section 98, read with Section 59, for making any alterations to the salaries or service benefits of the employees of the MCD, powers vests in the Commissioner, and it is from that office that any mandate must arise. Resolution No. 428, to the contrary, was a private resolution that did not carry the force of law. Furthermore, the power to appoint Municipal Engineer is subject to confirmation by the Government. Admittedly, the Commissioner did propose originally that such an upgradation may be made, yet, given subsequent consultations with the Union Department of Personnel and Training and the Ministry of Home Affairs, it is clear - as a matter of fact - that, ultimately, Resolution No. 428

did not receive the consent of the Commissioner. He actively opposed it in the light of the Union Government's refusal. In such a case, to allow the order of the CAT to stand would translate into circumventing the statutory prescription in Section 59, and the balance created in the Act by which all powers - in which the power to decide on the service conditions of employees is undoubtedly included - are vested in the Commissioner, unless otherwise provided (as for example is the case in the proviso to Section 92(1). In fact, the fact that Section 89 grants the power to appoint Municipal Engineers (i.e. Engineers-in-Chief) to the "Corporation" supports this reading, as, if the power to appoint, and to decide the salary of, Engineers-in-Chief, lay with the Standing Committee or any other branch of the Corporation, the same would have been mentioned. In the absence of any such deviation, the default mandate of Section 59 operates in this case, and thus, Resolution No. 428 must be held to be void for being passed without authority."

65. ***S.K. Tewari*** (supra) – relied upon by the petitioner was a case where the services of the appellant were terminated by the respondent Board. The Supreme Court examined the statutory scheme contained in the District Boards Act, 1922. The Supreme Court, inter alia, observed:

"11. … … … *By Section 82 power of the Board to decide questions arising in respect of the service including the power to punish, dismiss, transfer and control servants of the Board is statutorily delegated to the President in case of servants drawing a salary exceeding Rs 40 per mensem, and to the Secretary for other servants. But the exercise of the power is subject to the conditions prescribed in the provisos. Upon the exercise of the power under Section 82 vested in the Board, the President and the Secretary, there is yet another set of restrictions imposed by Section 84. The power is subject, among others, to the rules imposing conditions on the appointment of persons to offices or to particular office requiring professional skill and on the punishment or dismissal*

of persons so appointed, and to rules relating to servants of the Board. The rule providing for the procedure for termination of employment of servants of the Board is a rule relating to servants of the Board and may properly be made under Section 84(d) read with Section 172(2). Power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint. The power to terminate employment is therefore to be found in Section 82 and the method of its exercise is prescribed by the rules referred to in Section 84. The rules deal with the conditions under which an officer or servant may be dismissed (the dismissal being by way of punishment) and also under which determination of employment may take place."

66. The Supreme Court went on to draw a distinction between 'dismissal' – which was held to be punitive and 'termination simplicitor'. It held that the termination of the appellant being not by way of punishment, and not a dismissal, it was legal and justified.

67. In ***National Stock Exchange*** (supra), the Division Bench of this Court reiterated the well-settled legal proposition that in every legal system, there is a hierarchy of laws and the general principle is that if there is conflict between a norm in the higher layer of the hierarchy and a norm in the lower layer of the hierarchy, then the norm in the higher level prevails. The Division Bench noted the hierarchy prevalent in India which places the Constitution at the highest level followed by the statutory law; the delegated legislation in the form of Rules, Regulations, etc. and finally; the administrative instructions which may be issued in the form of the Government orders, circulars, etc.

68. We may now deal with the judgment of the learned Single Judge in ***G.S. Matharaoo*** (supra), which forms the basis of the impugned order before us. This decision was rendered by the learned Single Judge while dealing with a petition under Section 482 Cr.P.C., wherein the petitioner had challenged the lack of competence in the Commissioner of the Delhi Municipal Corporation to grant sanction for prosecution under Section 19 of the Prevention of Corruption Act. In the context of Section 19 of the Prevention of Corruption Act, the issue arose whether the Commissioner was the Disciplinary Authority in respect of the petitioner. The petitioner contended that the authority competent to remove him from service was the Corporation. However, sanction had been accorded under Section 19 of the Prevention of Corruption Act by the Commissioner, MCD, who was not competent to do so. It was contended that Section 59(d) of the Act, which provided that the Commissioner will be the Disciplinary Authority in relation to all Municipal Officer and other Municipal Employees, was subject to regulations that may be made in that behalf. It was also contended that Section 95 of the Act provides that an employee can be removed by such authority as may be prescribed by the Regulations. It was contended that on a conjoint reading of Section 59(d) and Section 95 of the Act, the power of the Commissioner to be the Disciplinary Authority of an employee of the Corporation is subject to Regulations. Reliance was also placed on Section 92 of the Act to say that the Commissioner, MCD, does not have unbridled power of being an Appointing Authority of all Municipal Officers and other Municipal Employees since the same is subject to Section 89 of the Act. Reliance was placed on the Regulations of 1959 and in particular Regulation 7 and the Schedule, which named the competent authority to

impose all penalties on Group "A" posts as the Corporation. Only minor penalties against Group "A" employees could be imposed by the Deputy Commissioner and in those cases, the Commissioner acted as the Appellate Authority. Since the petitioner G.S. Matharoo was a Group "A" officer, he claimed that only the Corporation was empowered to remove him. The petitioner placed reliance on ***Ajay Gandhi and Another v. B. Singh & Ors***, 2004 II AD (SC) 169, wherein the MCD had also taken the stand that Section 59(d) was subject to the Regulations of 1959. The petitioner invoked the principle of *contemporanea expositio* to contend that the interpretation accorded to the Regulations of 1959 by the MCD, even after amendment of the Act by Act No. 67 of 1993, was that the power vested in the Commissioner to act as the Disciplinary Authority under Section 59(d) was subject to the said Regulations of 1959.

69. Pertinently, the MCD was not a party to these proceedings. It was left to the Respondent CBI to defend the challenge to the authority of the Commissioner to act as the Disciplinary Authority – with power of removal, in respect of the petitioner G.S. Matharoo. The CBI, inter alia, contended that by virtue of Section 59 read with Section 95 of the Act, all executive power of the Corporation vested in the Commissioner. It was also contended that though, as per the Schedule read with Regulation 7 of the Regulations of 1959, the competent authority to impose penalties on category "A" posts was the Corporation, however, by virtue of the amendment of the Act vide Act No. 67 of 1993, sub-section (d) was substituted in Section 59, which made the Commissioner, MCD the Disciplinary Authority in relation to Municipal Officers and other Municipal

Employees. After substitution of sub- section (d) in Section 59, no fresh Regulation has been notified till date. It was contended that the mandate of clause (d) of Section 59 was that till the time the new Regulations were framed on a future date curtailing the power of the Commissioner, the Commissioner shall be the Disciplinary Authority of all Municipal Officers and other Municipal Employees. Reliance was also placed on the amended Section 92 of the Act, which made the Commissioner, MCD the appointing authority in respect of all Municipal Officers and other Municipal Employees, including category "A" officers, except the officers mentioned in the proviso to Section 92 and Section 89 of the Act. Reliance was also placed on sub-section (4) of Section 59 as inserted by the amendment which provided that against the order of the Commissioner; an appeal would lie before the Administrator. It was argued on behalf of the CBI that the deletion of Section 509 of the Act by the said amendment had the effect of repealing the Schedule to the Regulations. It was contended that in case of a conflict between the Act and the Regulations, the Act would prevail.

70. The learned Single Judge on the interpretation of Section 59 and, in particular clause (d) thereof, and Section 95(1) of the Act held that both these provisions relate to functions of Commissioner, MCD as Disciplinary Authority, and are subject to Regulations. Whereas clause (d) of Section 59 uses the expression "*any Regulation that may be made in this behalf*", Section 95(1) uses the expression "*by such authority as may be prescribed by Regulations*". The learned Single Judge held that the power conferred on the Commissioner by Section 59(d) is subject to other provisions of the Act, which includes Section 95. The learned Single Judge rejected the argument

of the CBI that the use of the expression "*that may be made in this behalf*" used in Section 59(d) with effect from 01.10.1993 by the amending Act of 1993, meant that the existing Regulations stood repealed, and till new Regulations are notified, the Commissioner is the only competent authority to take disciplinary action qua all Municipal Officers and other Municipal employees. The learned Single Judge observed that such an interpretation would lead to negating the provisions of Section 95 and 480 of the Act. Section 480 of the Act specifically provides that any regulation so made could be altered, or rescinded by the Corporation in the exercise of its powers under the Act. Sub-Section (2) of Section 480 also provides that no Regulation made by the Corporation under the Act shall have effect, until it is approved by the Central Government and published in the official gazette. Thus, regulations once notified would not stand repealed automatically without there being any rescission or alteration thereof by the Corporation. The learned Single Judge held that Section 59(d) and Section 95(1), on a harmonious construction lead to the inference, that the words used in Section 59(d) "*may be made in this behalf*" have to be read as "*may be prescribed in this behalf*". The learned Single Judge rejected the contention of the CBI that, with the introduction of Section 59(d), Section 95 stands subjugated to Section 59(d). While doing so, reliance was placed ***Pratap Singh v. Manmohan Dey***, AIR 1966 SC 1931, which applied the Rule of interpretation that a general later law does not abrogate an earlier special one by mere implication. The learned Single Judge also referred to Section 89(1) of the Act which names the Corporation as the appointing authority in respect of certain category of senior Municipal officers, and observed that absence of regulations referable to Section 59(d) would render the

Commissioner as their Disciplinary Authority, even though the Commissioner is not their appointing authority. The learned Single Judge held that on a plain reading of Section 59(d) and 95(1), it is clear that the power of the Commissioner to act as the Disciplinary Authority was subject to the pre-existing Regulations of 1959. The learned Single Judge also referred to the proposal sent by the Additional Commissioner (Establishment) to bifurcate the posts in category "A", such that for the officers below the rank of Deputy Commissioner, the Commissioner would be the Disciplinary Authority, and for the officers holding the posts of Deputy Commissioner and higher, the Corporation would act as the Disciplinary Authority. However, the said proposal was not accepted by the Corporation. Thus, the Corporation was of the considered opinion that the existing Schedule should continue. The learned Single Judge rejected the submission of the CBI that Section 59(d) of the Act, as amended by Act No. 67 of 1993, had the effect of repealing the existing Regulations of 1959. Reliance placed by the CBI on the omission of Section 509 by amended act 67 of 1993 was also rejected.

71. With utmost respect to the learned Single Judge, we are of the considered view that the decision in ***G.S. Matharaoo*** (supra) does not correctly interpret the law. First and foremost, neither the MCD, nor the Commissioner was a party to these proceedings. The issue whether the Commissioner, MCD was the disciplinary authority – empowered to remove the petitioner G.S. Matharaoo, who was a Group "A" officer, was decided behind the back of the Corporation and the Commissioner, MCD. In any event, the CBI apparently raised all the issues that could be raised before the

Court. Yet, the learned Single Judge did not have before her the context in which the Act was amended vide Act No. 67 of 1993. The purpose and object of the said amendment, and the *mischief* that it sought to remedy, were not placed before the learned Single Judge and, consequently, not considered by her.

72. The learned Single Judge laid emphasis on the opening words "*Save as otherwise provided in this Act, ...*", in Section 59, to hold that clause (d) of Section 59 is subject to Section 95(1) of the Act. She holds "*Further the opening words of the Section 59, which provides for the functions of the Commissioner are, "save as otherwise provided in this Act". Thus, the power of the Commissioner to be the discretionary (sic disciplinary) authority in relation to all municipal officers and other municipal employees is subject to other provisions of the Act and Regulations. However, Section 95(1) which already existed in the Statute provides that every municipal officer or other municipal employee shall be liable to have his increment or promotion withheld, to be removed or dismissed by such authority as may be prescribed by Regulations. Thus both the provision relating to the power of the disciplinary authority and the provision relating to the functions of the Commissioner MCD as disciplinary authority are subject to the Regulations.*"

73. With due respect to the learned Single Judge, the reasoning adopted by her in ***G.S. Matharaoo*** (supra) does not appeal to us. The expression "*Save as otherwise provided in this act*" in the opening paragraph of Section 59 relates to "*the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which*

confers, any power, or impose any duty on the Corporation.....". After the opening general vesting of executive power in the Commissioner – which saves the executive authority vested in other authorities under the Act, Section 59 goes on to vest specific powers on the Commissioner. For this purpose, the later portion of Section 59 uses the expression "*who shall also –.....*". Thus, after stating that: Subject as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of the Act (and any other Act for the time being in force which confers any, or impose any duty on the Corporation) vests in the Commissioner, Section 59 additionally vests the powers specifically mentioned in clause (a) to (d) of Section 59 upon the Commissioner. Pertinently, the opening part of Section 59 does not use the expression "*which shall include.....*", or the like. Had the said expression, or similar expression, been used, it could be said that the powers vested in the Commissioner by Clauses (a) to (d) are more specific illustrations of the general executive power vested in the Commissioner. Thus, to limit the power vested in the Commissioner to act as the Disciplinary Authority in relation to all Municipal Officers and other Municipal employees – by virtue of Clauses (d) of Section 59 of the Act, by reference to Section 95(1) would be an erroneous reading of the opening words of Section 59 of the Act.

74. It appears that the arguments advanced by learned counsel for the CBI in ***G.S. Matharoo*** (supra) was that the use of the expression "*subject to any Regulation that may be made in this behalf.....*" in clause (d) of Section 59, had the effect of repealing the Regulations of 1959. It is this argument which the learned Single Judge rejected. In our view, there was no question

of the Regulations of 1959 getting repealed upon the amendment of the Act by Act No. 67 of 1993. The effect of the said amendment was that so far as the Regulations of 1959 were in conflict with the amended Act, the provisions of the said Regulations got eclipsed, and could not be looked at while interpreting the scope of the amended provisions of the Act, particularly, in relation to the cases which arose post the amendment of the Act.

75. We have difficulty in accepting the argument, which was accepted by the learned Single Judge, that "*regulation that may be made in this behalf*", if interpreted literally and according to their plain grammatical meaning, would negate Section 95 and 480 of the Act. Amendment of Section 59 by introduction of a new clause (d), does not have the effect of repealing the Regulations of 1959. It only eclipses the applicability of such of those regulations, which have a bearing on the power of the Commissioner to act as the Disciplinary Authority in respect of Municipal Officers and other Municipal employees. The learned Single Judge has observed that Section 95 specifically prescribed the authority competent to remove or dismiss all Municipal Officers and other Municipal employees. We again beg to differ. That is not the purpose of Section 95. Section 95 fixes the liability of Municipal Officers and other Municipal employees, that he shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for breach of any departmental regulations, or of discipline, or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations. The focus of Section 95 is not to fix the Disciplinary

Authority – which subject is specifically dealt with Section 95(d) of the Act. The Regulations, being subordinate legislation, had to give way to the Amendment to the Act made by the Parliament. Thus, there was no question of negation of Section 480 of the Act.

76. We also cannot agree with the conclusion drawn by the learned Single Judge that on a harmonious construction of Section 59(d) and Section 95(1), the words "*regulation that may made in this behalf*", have to be read as "*may be prescribed in this behalf*", as used in Section 95(1). While giving the aforesaid interpretation, the learned Single Judge has observed that both the Sections 59(d) and 95(1) "*provide for the disciplinary authority of the municipal officers and other Municipal employees.....*" As aforesaid, Section 95 does not provide for the Disciplinary Authorities of the Municipal Officers and other Municipal employees. The learned Single Judge has also observed that Section 59 is subject to other provisions of the Act. Even this is not correct, since the opening words of Section 59 do not state that the said Section is subject to other provisions of the Act. It merely states that "*Save as otherwise provided in this Act .....*". The learned Single Judge has disregarded the words used in Clause (d) of Section 59, which could not have been done – unless ascribed the normal grammatical meaning to those words, would have led to an absurdity or unworkability.

77. The invocation of the principle that a general later law does not abrogate an earlier special one by mere implication, in the context of Section 59(d) and Section 95(1), in our view, was erroneous. Here, we are dealing with the provisions of the same Act, and not two different laws. No doubt, we are dealing with an amended Section 59(d), and Section 95(1) which has

remained unamended. There was no issue which arose before the learned Single Judge while dealing with ***G.S. Matharaoo*** (supra) in relation to abrogation of Section 95(1). There is no conflict between Section 59(d) and Section 95(1). At the highest, the issue was whether the conflicting provisions of Regulations of 1959 stood repealed/ abrogated/ eclipsed on enactment of clause (d) of Section 59 by Act 67 of 1993. As aforesaid, even the said issue, really speaking, did not arise and the only issue that arose was whether the power of the Commissioner to act as the Disciplinary Authority under Section 59(d) was subject to the pre-existing Regulations of 1959, or the regulations that may be made in that behalf post the said amendment.

78. The learned Single Judge refers to Section 89(1) of the DMC Act, which vests the power to make appointment in the Corporation for a certain category of senior Municipal officers. The learned Single Judge holds that by virtue of Section 59(d) – in the absence of any Regulation that may be made, the Commissioner would become their Disciplinary Authority. This argument, unfortunately, fails to take notice of the first proviso to Section 95(1), which provides that "*no such officer or other employee shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed.*"

79. The learned Single Judge invoked the principle of *contemporanea expositio* to say that the stand of the Corporation earlier was that the power under Section 59(d) vested in the Commissioner is subject to the existing Regulation of 1959. With due respect, the said principle was not attracted in the circumstances of the case, since the Regulations were framed in 1959; and the Amendment to the Act was brought, as recently as 1993. In relation

to the said principle, the Supreme Court has observed in ***Doypack*** (supra) as follows:

> *"61.**Contemporanea expositio, is a well settled principle or doctrine which applies only to the construction of ambiguous language in old statutes.** Reliance may be placed in this connection on Maxwell 13th edn., page 269. **It is not applicable to modern statutes.** Reference may be made to G.P. Singh, Principles of Statutory Interpretation, 3rd edn., pages 328 and 239. As noted in Maxwell on the Interpretation of Statutes, 12th edn. at page 269 that the leading modern case on contemporanea expositio is the case of Campbell College, Belfast v. Commissioner of Valuation for Northern Ireland [(1964) 1 WLR 912 : (1946) 2 All ER 705] in which **House of Lords has made it clear that the doctrine is to be applied only to the construction of ambiguous language in the very old statutes.** It is therefore well to remember what Lord Watson said in Clyde Navigation Trustees v. Laird [(1883) LR 8 AC 658 (HL)] that **contemporanea expositio could have no application to a modern Act. We, therefore, reject the attempt on the part of the petitioners to lead us to this forbidden track by referring to various extraneous matters which we have indicated before. Furthermore those external aids sought before us do not support the petitioners' approach to this question at all.**"* (emphasis supplied)

Thus, reliance placed by the learned Single Judge upon the stand taken by the MCD in ***Ajay Gandhi*** (supra) is misplaced.

80. Reference made by the learned Single Judge to the proposal sent to the Additional Commissioner (Establishment) on 20.09.2010 for amendment of the Regulations of 1959, and to the rejection of the said proposal by the Corporation, in our view is neither here nor there. As to what was proposed to be amended, and rejected, has no bearing on the interpretation of the statute as it exists. That rejection was by the Corporation, which is not the

Statutory Authority which framed the Amended Section 59(d) and 92(1) of the Act. The Corporation has no authority to control the scope of these sections. Pertinently, even the Regulations that may be framed by the Corporation require the approval of the Central Government for them to become enforceable.

81. Moreover, the learned Single Judge did not have the benefit of viewing the issue which arose before her in the light of the decision of the Supreme Court in ***C. Dinakar, IPS*** (supra), and; the **S. Balakrishnan Report**; the judgment of the Supreme Court in ***City of Nagpur, Civil Lines, Nagpur*** (supra), which have been referred to earlier.

82. We, therefore, reject the reliance placed by learned counsel for the petitioner on ***G.S. Matharaoo*** (supra).

83. We may now turn to a decision of a Division Bench of this Court in ***Ved Prakash Kanoji*** (supra). A perusal of this decision shows that the issue as to whether the Commissioner, MCD could act as the Disciplinary Authority in respect of the two respondents was not even an issue which arose for consideration before the Division Bench, in the facts of the case before it. This was a case where two officers – who were appointed as the Deputy Medical Officer and Resident Medical Superintendent in the Corporation, were investigated by the CBI. The CBI could not gather evidence which could sustain a charge of conspiracy, but since facts which surfaced, prima facie, justified departmental action, the CBI made recommendation to the Corporation to proceed departmentally against the two officers. The Central Vigilance Commission also accorded its opinion

concurring with the view of the CBI. The Commissioner, MCD put up a proposal before the Corporation – on the assumption that the Disciplinary Authority in respect of the said two officers was the Corporation. The proposal was rejected by the Corporation by a resolution passed on 10.03.2003. The matter was referred back to the CVC which reiterated its decision and once again the Commissioner, MCD – after making a reference to the advice rendered by the Central Vigilance Commission, referred the matter to the Corporation to initiate disciplinary action against the two officers. Once again, vide Resolution dated December 02, 2004 the Corporation rejected the proposal. The Commissioner, MCD then placed the matter before the Lieutenant Governor (on the premise that the Corporation was the Disciplinary Authority/ competent authority and the Lieutenant Governor was the Revisional/ Reviewing Authority). The Lieutenant Governor vide order dated 12.12.2004 advised the Corporation to initiate departmental action against the two officers. Consequently, the Commissioner, MCD placed the matter once again before the Corporation which, once again, resolved not to initiate any departmental action on 21.02.2005. Once again, the Commissioner placed the matter before the Lieutenant Governor, Delhi, who this time, ordered departmental action to be initiated against the two officers. Resultantly, the Commissioner, MCD again placed the matter before the Corporation. By another resolution dated 24.10.2005, the Corporation again rejected the proposal to initiate departmental action against the two officers.

84. When the Commissioner, MCD again placed the matter before the Corporation for the fifth time for initiation of departmental proceedings on

21.06.2006, the two officers preferred a writ petition before this Court alleging *mala fides* against the Commissioner. That petition was transferred to the Central Administrative Tribunal for decision. It was contended by the Commissioner, MCD that the Commissioner was the Disciplinary Authority in respect of the posts held by the two officers, and that under misapprehension of law, the Commissioner had been sending the proposal to initiate departmental action by the Corporation. The Transfer Application of the said two officers was allowed by the Tribunal, which proceeded on the assumption that even if the posts held by the said two officers were held to be under the disciplinary control of the Commissioner, MCD, the superior authority would be the Corporation, and once the superior authority had decided not to initiate disciplinary proceedings, the Disciplinary Authority would be bound by it. Against the decision of the Tribunal dated 25.01.2010, the MCD preferred the writ petition in question.

85. Thus, it would be seen that the issue whether the Commissioner, MCD was the Disciplinary Authority in respect of the two officers concerned, or not, was not the issue which was raised by the said two officers before the Tribunal. They were aggrieved by repeated attempts made by the Commissioner to get the approval of the Corporation, despite four earlier rejections, for initiation of departmental proceedings. The aforesaid was a plea in defence set up by the Commissioner, MCD. Pertinently, no order was passed by the Commissioner acting as the Disciplinary Authority. All that he had done was to repeatedly send the proposal to the Corporation to seek their approval to act against the two officers. Thus, the defense raised by the Commissioner, MCD was

academic in the facts of that case. The Tribunal did not determine the said issue, but proceeded on the assumption that even if the posts held by the two officers were to be considered as under disciplinary control of the Commissioner, MCD, the superior authority would be the Corporation, and once the superior authority had decided not to initiate disciplinary proceedings, the Commissioner, MCD would be bound.

86. No doubt, in paragraph 11(I), the question framed by the Division Bench for consideration was "*Who is the Disciplinary Authority of the post of Deputy Health Officer and the post of Senior Medical Superintendent i.e. the posts held by Dr. Ved Prakash and Dr. Jai Raj?*", but that issue did not actually arise for consideration and it was not necessary for the Division Bench to determine the said issue for disposal of the petitions. In this light, the issue that arises for consideration is whether the decision rendered by the Division Bench on an issue which squarely did not arise for its consideration, and the determination of which was not essential for the disposal of the case, could be considered as a binding precedent, or was it merely an *obiter dictum*? As to what constitutes an *obiter dictum*, and not a binding precedent, is no more *res integra*.

87. In ***Girnar Traders v. State of Mahrashtra***, (2007) 7 SCC 555, the Supreme Court held that the observations made by it in the earlier decision in ***Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants Assn.***, 1988 Supp SCC 55, are as follows:

> "*regarding the linking of words "aforesaid" from the words "no steps as aforesaid are commenced for its acquisition" of Section 127 with the steps taken by the competent authority for*

acquisition of land as provided in Section 126(1) of the MRTP Act "had no direct or substantial nexus either with the factual matrix or any of the legal issues raised before it. It is apparent that no legal issues, either with respect to interpretation of words "no steps as aforesaid are commenced for its acquisition" as stipulated under the provisions of Section 127 or any link of these words with steps to be taken on service of notice, were contended before the Court. ***Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents****"* (emphasis supplied)

88. The decision of the Supreme Court in ***Arun Kumar Aggarwal v. State of M.P. & Ors.***, (2014) 13 SCC 707 contains a detailed discussion on what constitutes an *obiter dictum*. We may extract the relevant paragraphs from this decision, which read as follows:

> ***"26.****Wharton's Law Lexicon (14th Edn., 1993) defines the term* ***"obiter dictum" as an opinion not necessary to a Judgment; an observation as to the law made by a Judge in the course of a case, but not necessary to its decision, and therefore, of no binding effect;*** *often called as obiter dictum, 'a remark by the way'.*
>
> ***27.****Black's Law Dictionary, (9th Edn., 2009) defines the term "obiter dictum" as:*
>
> > ***"Obiter dictum.—A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).*** *— Often shortened to dictum or, less commonly, obiter. ...*

'Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way"—that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the Judge or court merely by way of illustration, argument, analogy, or suggestion…. In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as "dicta", or "obiter dicta", these two terms being used interchangeably.'"

28.*Words and Phrases, Permanent Edn., Vol. 29 defines the expression "obiter dicta" or "dicta" thus:*

*"**Dicta are opinions of a Judge which do not embody the resolution or determination of the court**, and made without argument or full consideration of the point, are not the professed deliberate determinations of the Judge himself; **obiter dicta are opinions uttered by the way, not upon the point or question pending**, as if turning aside for the time from the main topic of the case to collateral subjects; **it is mere observation by a Judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him;** 'obiter dictum' is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the Judge who utters them; discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is 'obiter dictum'."*

29. *The concept of "dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pp. 309-12 as thus:*

> *"190. Dicta*
>
> *a. In general*
>
> *A dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication;* ***an opinion expressed by a Judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and not necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties****; or an opinion of a Judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the Judge himself. The term 'dictum' is generally used as an abbreviation of 'obiter dictum' which means a remark or opinion uttered by the way.*
>
> ***Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated.*** *This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a*

dictum is not the 'law of the case,' nor res judicata."

30. *The concept of "dicta" has been discussed in Halsbury's Laws of England, 4th Edn. (Reissue), Vol. 26, Para 574 as thus:*

> ***"574. Dicta.—Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed 'dicta'. They have no binding authority on another court, although they may have some persuasive efficacy.*** *Mere passing remarks of a Judge are known as 'obiter dicta', whilst* ***considered enunciations of the Judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed 'Judicial dicta'****. A third type of dictum may consist in a statement by a Judge as to what has been done in other cases which have not been reported.*
>
> *... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."*

31. *In MCD v. Gurnam Kaur [(1989) 1 SCC 101], and Karnataka SRTC v. Mahadeva Shetty [(2003) 7 SCC 197 : 2003 SCC (Cri) 1722] , this Court has observed that: (Gurnam Kaur case [(1989) 1 SCC 101] , SCC p. 111, para 12)*

> *"12. ... Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."*

32. *In State of Haryana v. Ranbir [(2006) 5 SCC 167 : 2006 SCC (L&S) 1012] , this Court has discussed the concept of the "obiter dictum" thus: (SCC pp. 171-72, para 13)*

> *"13. ... A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known.* ***Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect.*** *See ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521].* ***It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative****. (See Karnataka SRTC v. Mahadeva Shetty [(2003) 7 SCC 197 : 2003 SCC (Cri) 1722] .)"*

33. *In Girnar Traders v. State of Maharashtra [(2007) 7 SCC 555] this Court has held: (SCC p. 586, para 53)*

> *"53. ...* ***Thus, observations of the court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi.*** *Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the court, is not of much avail to the respondents.""* (emphasis supplied)

89. Thus, in our considered view, the decision in ***Ved Prakash Kanoji*** (supra) cannot be considered as a binding precedent on the proposition whether the Commissioner, MCD was the Disciplinary Authority in respect

of the two officers, namely the Deputy Health Officer and Resident Medical Superintendent.

90. The Division Bench, while undertaking the discussion on the first issue framed by it, as extracted hereinabove, inter alia, observed as follows:

> *"31. As already noted hereinabove, the Delhi Municipal Act, 1957 was enacted in the year 1957. In exercise of its power under Section 98 of the DMC Act, the Central Government framed Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959. A cumulative reading of Section 95 of the DMC Act and Regulation 7 of the Regulations brings out that the Disciplinary Authority of a particular post has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations, which Schedule prescribes different Disciplinary Authorities for different categories of posts.*
>
> *32. Then came the year 1993 when the DMC Act, 1957 was amended. By virtue of the amendments made clause (d) of Section 59 of the DMC Act, 1957 was amended to provide: 'subject to any regulation that may be made in this behalf, the Commissioner shall be the disciplinary authority in relation to all municipal officers and other municipal employees.' However, correspondingly no change was effected in Section 95, Regulation 16 and the existing Schedule to the Act and the Regulations. Thus, while on the one hand we have Section 59(d) which prescribes that the Commissioner shall be the Disciplinary Authority in relation to all municipal officers and other employees, on the other hand we have Section 95 and Regulation 16 which prescribe that the Disciplinary Authority of a particular post has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations, which Schedule prescribes different Disciplinary Authorities for different categories of posts.*

33. This apparent conflict between Sections 59(d) and 95, Regulation 16 and the Schedule was examined by a learned Single Judge of this Court in Crl.M.C. No. 2695/2010 titled 'G.S. Matharaoo v. CBI' decided on January 25, 2012. It would be relevant to note following portions of said decision:-

……

34. We entirely agree with the aforesaid view taken by the Single Judge that Sections 59(d) and 95 should be harmoniously construed and the Disciplinary Authority, for a given post, has to be determined with reference to the Schedule appended to Regulation 7 of the Regulations.

35. As already noted hereinabove, the Schedule prescribes different Disciplinary Authorities for different categories of posts. In the pleadings it has not been made clear as to in which category the post of Deputy Health Officer and the post of Resident Medical Superintendent falls i.e. the posts held by Dr. Ved Prakash and Dr. Jai Raj. There is no reference to the category of the posts held by Dr. Ved Prakash and Dr. Jai Raj in the pleadings of the parties before the Tribunal. Thus, unless the category of the posts held by Dr. Ved Prakash and Dr. Jai Raj is known, the Disciplinary Authority of said posts cannot be determined.

36. And thus the matter needs to be remanded to the Commissioner MCD to determine as to in which category the post held by Dr. Ved Prakash and Dr. Jai Raj falls and thereupon find out as to who would be the disciplinary authority of Dr. Jai Raj and Dr. Ved Prakash."

91. In the remaining portion of the decision, the Division Bench proceeded to discuss the other issues framed by it. While doing so, it rejected the finding of the Tribunal "*assuming the Commissioner was the Disciplinary Authority, then the Corporation would be the Appellate Authority.....*".

92. With due respect, firstly, it appears that the decision in ***Ved Prakash Kanoji*** (supra) cannot be considered as a binding precedent since the issue determined by it with regard to competence of the Commissioner to act as the Disciplinary Authority in the light of the Regulation 7 read with Schedule to the Regulations of 1959, did not arise for consideration before the Division Bench. Secondly, just like the learned Single Judge, who decided ***G.S. Matharaoo*** (supra), the Division Bench did not have before it the context in which the Act was amended vide Act No. 67 of 1993, and the *mischief* that it sought to remedy. Thus, it proceeded to view and interpret the amended Section 59(d) and Section 95(1) unmindful of the context in which the amendment was brought about. Thirdly, even the Division Bench did not have the benefit of the decisions of the Supreme Court in ***C. Dinakar, IPS*** (supra) and ***City of Nagpur, Civil Lines, Nagpur*** (supra).

93. It is also evident from the decision in ***Ved Prakash Kanoji*** (supra) that the Division Bench merely reproduced passages from ***G.S. Matharaoo*** (supra) and expressed its opinion that it agrees with the same. There was no independent exercise undertaken by the Division Bench to analyse the provisions of the Act, particularly Section 59(d) post amendment, and Section 95(1) in the context of the amended Section 92. It also appears from the decision in ***Ved Prakash Kanoji*** (supra) that the Division Bench did not even have before it the relevant facts, namely, whether the two officers before it, who were holding the posts of Deputy Health Officer and Resident Medical Superintendent fall in the category of posts over whom the Commissioner, MCD exercised disciplinary control, or not. It is for this

reason that the Division Bench remanded the matter back to the Tribunal for determination of the said issue.

94. We may also observe that ***Ved Prakash Kanoji*** (supra) is a typical example of the lacuna highlighted by the **S. Balakrishnan Committee Report** which we have taken note of. Despite the CBI; the Commissioner; the CVC, and; the Lieutenant Governor expressing the view that Disciplinary action be taken against the two officers for their misdemeanor, the Corporation, on four occasions turned down the proposal to initiate Disciplinary Action against these officers.

95. For the aforesaid reasons, in our considered view, neither the decision in ***G.S. Matharaoo*** (supra), nor the decision in ***Ved Prakash Kanoji*** (supra) have viewed the issue that arose for our consideration in the correct perspective and context. Moreover, the decision in ***Ved Prakash Kanoji*** (supra) does not constitute a binding precedent on the first issue determined by it, namely, whether power of the Commissioner, MCD to act as the Disciplinary Authority was subject to the Regulations of 1959, or not. The view expressed in ***Ved Prakash Kanoji*** (supra) on the said issue can, at best, be considered as an *obiter dictum*, which has persuasive force but is not binding on us as a precedent.

96. In the light of our aforesaid discussion, we are of the considered view that the decision in ***G.S. Matharoo*** (supra) is not a good law. The decision in ***Ved Prakash Kanoji*** (supra) does not constitute a binding precedent on the issue whether the Commissioner is the Disciplinary Authority in respect of the Group 'A' officers. We are of the considered view that the

Commissioner was the Disciplinary Authority of the respondent and had the competence by virtue of Section 59(d) to act as the Disciplinary Authority against the respondent and to dismiss him from service.

97. Accordingly, the writ petition is allowed and the impugned decision of the Tribunal is set aside.

(VIPIN SANGHI)
JUDGE

(A.K. CHAWLA)
JUDGE

AUGUST 28, 2019